

CHAPTER 2
NATIONAL TREATMENT AND MARKET ACCESS FOR GOODS

Section A: Common Provisions

Article 2.1: Scope and Coverage

Except as otherwise provided in this Agreement, this Chapter applies to trade in goods between the Parties.

Article 2.2: Definitions

For the purposes of this Chapter:

consumed means

- (a) actually consumed; or
- (b) further processed or manufactured so as to result in a substantial change in the value, form, or use of the good or in the production of another good;

distributor means a person of a Party who is responsible for the commercial distribution, agency, concession, or representation in the territory of that Party of goods of the other Party;

duty-free means free of customs duty;

goods intended for display or demonstration includes their component parts, ancillary apparatus, and accessories;

goods temporarily admitted for sports purposes means sports requisites for use in sports contests, demonstrations, or training in the territory of the Party into whose territory such goods are admitted;

import licensing means an administrative procedure requiring the submission of an application or other documentation (other than that generally required for customs clearance purposes) to the relevant administrative body as a prior condition for importation into the territory of the importing Party; and

performance requirement means a requirement that:

- (a) a given level or percentage of goods or services be exported;
- (b) domestic goods or services of the Party granting a waiver of customs duties or an import license be substituted for imported goods;
- (c) a person benefiting from a waiver of customs duties or an import license

purchase other goods or services in the territory of the Party granting the waiver of customs duties or the import license, or accord a preference to domestically produced goods;

- (d) a person benefiting from a waiver of customs duties or an import license produce goods or supply services, in the territory of the Party granting the waiver of customs duties or the import license, with a given level or percentage of domestic content; or
- (e) relates in any way the volume or value of imports to the volume or value of exports or to the amount of foreign exchange inflows;

but does not include a requirement that an imported good be:

- (f) subsequently exported;
- (g) used as a material in the production of another good that is subsequently exported;
- (h) substituted by an identical or similar good used as a material in the production of another good that is subsequently exported; or
- (i) substituted by an identical or similar good that is subsequently exported.

Section B: National Treatment

Article 2.3: National Treatment

Each Party shall accord national treatment to the goods of the other Party in accordance with Article III of GATT 1994, including its interpretative notes. To this end, Article III of GATT 1994 and its interpretative notes are incorporated into and made part of this Agreement, *mutatis mutandis*.

Section C: Reduction or Elimination of Customs Duties

Article 2.4: Reduction or Elimination of Customs Duties

1. Except as otherwise provided in this Agreement, each Party shall progressively reduce or eliminate its customs duties on originating goods of the other Party in accordance with its Schedule to Annex 2-A.
2. On the request of either Party, the Parties shall consult to consider possibility of accelerating the reduction or elimination of customs duties set out in their Schedules to Annex 2-A. An agreement by the Parties to accelerate the reduction or elimination of a

customs duty on a good shall supersede any duty rate or staging category determined pursuant to their Schedules to Annex 2-A for that good when approved by each Party in accordance with its applicable legal procedures.

3. A Party may unilaterally accelerate the reduction or elimination of customs duties set out in its Schedule to Annex 2-A at any time if it so wishes. A Party shall notify the other Party through a diplomatic note immediately after completion of the internal procedures required for the amendments to enter into force. Such amendments shall enter into force on the date specified in the diplomatic note, or in any event, within 90 days of such notification. Any concessions granted by the Party according to the unilateral acceleration set out therein shall not be withdrawn.

4. If at any moment a Party reduces its applied most-favored-nation (hereinafter referred to as "MFN") customs duty rate after the entry into force of this Agreement, that duty rate shall apply as regards trade covered by this Agreement if and for as long as it is lower than the customs duty rate calculated in accordance with its Schedule to Annex 2-A.

Article 2.5: Standstill

Except as otherwise provided in this Agreement, neither Party may increase any existing customs duty, or adopt any new customs duty, on an originating good of the other Party. This shall not preclude that a Party may:

- (a) raise a customs duty that was unilaterally reduced other than as provided for in Article 2.4.2 or 2.4.3 to the lower of the levels established either:
 - (i) in its Schedule to Annex 2-A; or
 - (ii) pursuant to Articles 2.4.2 or 2.4.3; or
- (b) maintain or increase a customs duty as authorized by the Dispute Settlement Body of the WTO.

Section D: Special Regimes

Article 2.6: Temporary Admission of Goods

1. Each Party shall grant duty-free temporary admission for the following goods, regardless of their origin:

- (a) professional equipment, such as equipment used for scientific research, pedagogical or medical activities, the press or television and cinematographic purposes, necessary for a person who qualifies for temporary entry pursuant to the laws of the importing Party;

- (b) goods intended for display or demonstration at exhibitions, fairs, meetings, or similar events;
- (c) commercial samples; and
- (d) goods admitted for sports purposes.

2. Each Party shall, on the request of the person concerned and for reasons its customs administration considers valid, extend the time limit for temporary admission beyond the period initially fixed in accordance with its domestic law.

3. Neither Party may condition the duty-free temporary admission of a good referred to in paragraph 1, other than to require that the good:

- (a) be used solely by or under the personal supervision of a national or resident of the other Party in the exercise of the business activity, trade, profession, or sport of that person;
- (b) not be sold or leased while in its territory;
- (c) be accompanied by the deposit of a bond or security in an amount no greater than the charges that would otherwise be owed on entry or final importation, releasable on exportation of the good;
- (d) be capable of identification when exported;
- (e) be exported on the departure of the person referenced in subparagraph (a), or within such other period related to the purpose of the temporary admission as the Party may establish, or within 6 months, unless extended;
- (f) be admitted in no greater quantity than is reasonable for its intended use; and
- (g) be otherwise admissible into the Party's territory under its domestic law.

4. If any condition that a Party imposes under paragraph 3 has not been fulfilled, the Party may apply the customs duty and any other charge that would normally be owed on the good plus any other charges or penalties provided for under its law.

5. Each Party shall permit a good temporarily admitted under this Article to be re-exported through a customs port other than that through which it was admitted.

6. Each Party shall provide that its customs administration or other competent authority shall relieve the importer or another person responsible for a good admitted under this Article from any liability for failure to re-export the good on presentation of proof to the satisfaction of the customs administration of the importing Party that the good has been destroyed by reason of force majeure.

Article 2.7: Duty-Free Entry of No Commercial Value Articles That Are for Advertising Purposes or to be Used as Samples

Each Party shall grant duty-free entry to no commercial value articles that are for advertising purposes or to be used as samples in accordance with its laws and regulations.

Section E: Non-Tariff Measures¹

Article 2.8: Import and Export Restrictions

1. Except as otherwise provided in this Agreement, neither Party may adopt or maintain any prohibition or restriction on the importation of any good of the other Party or on the exportation of any good destined for the territory of the other Party, except in accordance with Article XI of GATT 1994 and its interpretative notes, and to this end, Article XI of GATT 1994 and its interpretative notes are incorporated into and made part of this Agreement, *mutatis mutandis*.

2. Where a Party proposes to adopt an export prohibition or restriction on energy and mineral resources in accordance with paragraph 2(a) of Article XI of GATT 1994, the Party shall provide notice in writing, as far in advance as practicable, to the other Party of such proposed prohibition or restriction and its reasons together with its nature and expected duration.

3. The Parties understand that the GATT 1994 rights and obligations incorporated by paragraph 1 prohibit, in any circumstances in which any other form of restriction is prohibited, a Party from adopting or maintaining:

- (a) export and import price requirements, except as permitted in enforcement of countervailing and antidumping duty orders and undertakings;
- (b) import licensing conditioned on the fulfillment of a performance requirement;
or
- (c) voluntary export restraints inconsistent with Article VI of GATT 1994, as implemented under Article 18 of the SCM Agreement and Article 8.1 of the Anti-Dumping Agreement.

4. In the event that a Party adopts or maintains a prohibition or restriction on the importation from or exportation to a non-Party of a good, no provision of this Agreement shall be construed to prevent the Party from:

¹ Non-tariff measures related to sanitary and phytosanitary measures and technical barriers to trade are addressed in Chapters 5 (Sanitary and Phytosanitary Measures) and 6 (Technical Barriers to Trade) respectively and therefore they shall not be subject to the provisions of this Section. This shall not affect the implementation of Article 2.15.

- (a) limiting or prohibiting the importation of the good of the non-Party from the territory of the other Party; or
- (b) requiring as a condition for exporting the good of the Party to the territory of the other Party, that the good not be re-exported to the non-Party, directly or indirectly, without being consumed in the territory of the other Party.

5. In the event that a Party adopts or maintains a prohibition or restriction on the importation of a good from a non-Party, the Parties, on the request of either Party, shall consult with a view to avoiding undue interference with or distortion of pricing, marketing, or distribution arrangements in the territory of the other Party.

6. Neither Party may, as a condition for engaging in importation or for the importation of a good, require a person of the other Party to establish or maintain a contractual or other relationship with a distributor in its territory.

7. For greater certainty, paragraph 6 does not prevent a Party from requiring a person referred to in that paragraph to designate an agent for the purpose of facilitating communications between its regulatory authorities and that person.

Article 2.9: Import Licensing

1. Neither Party may adopt or maintain a measure that is inconsistent with the Import Licensing Agreement.²

- 2. (a) Promptly after this Agreement enters into force, each Party shall notify the other Party of its existing import licensing procedures, if any. The notification shall:
 - (i) include the information specified in Article 5 of the Import Licensing Agreement; and
 - (ii) be without prejudice as to whether the import licensing procedure is consistent with this Agreement.
- (b) Before applying any new or modified import licensing procedure, a Party shall publish the new procedure or modification on an official government Internet site. To the extent possible, the Party shall do so at least 30 days before the new procedure or modification takes effect.

3. Neither Party may apply an import licensing procedure to a good of the other Party unless the Party has complied with the requirements of paragraph 2 with respect to that procedure.

² For the purposes of paragraph 1 and for greater certainty, in determining whether a measure is inconsistent with the Import Licensing Agreement, the Parties shall apply the definition of “import licensing” contained in that Agreement.

Article 2.10: Administrative Fees and Formalities

1. Each Party shall ensure that all fees and charges imposed in connection with importation and exportation shall be consistent with their obligations under Article VIII:1 of GATT 1994 and its interpretative notes, which are hereby incorporated into and made part of this Agreement, *mutatis mutandis*.
2. Each Party shall make available and maintain through the Internet a current list of the fees and charges it imposes in connection with importation or exportation.

Article 2.11: State Trading Enterprises

1. The rights and obligations of the Parties with respect to state trading enterprises shall be governed by Article XVII of GATT 1994, its interpretative notes, and the *Understanding on the Interpretation of Article XVII of GATT 1994*, which are incorporated into and made part of this Agreement, *mutatis mutandis*.
2. Where a Party requests information from the other Party on individual cases of state trading enterprises, the manner of their operation and the effect of their operations on bilateral trade, the requested Party shall have regard to the need to ensure maximum transparency possible without prejudice to Article XVII:4(d) of GATT 1994 on confidential information.

Article 2.12: Trade Related Non-Tariff Measures

1. Each Party shall ensure the transparency of its non-tariff measures affecting trade between the Parties and that any such measures are not prepared, adopted or applied with the view to or with the effect of creating unnecessary obstacles to trade between the Parties.
2. To the extent possible, each Party should allow a reasonable interval between the publication of any such measures and their effective date.

Article 2.13: Establishment of Working Group

1. Pursuant to Article 2.16.3(c), the Parties hereby establish a working group under the auspices of the Committee on Trade in Goods, comprising relevant and competent officials of each Party, to conduct consultations on matters related to non-tariff measures.
2. The working group shall consider approaches that may better facilitate trade between the Parties and present to the Parties the results of its consideration, including any recommendation, preferably within 12 months. The results of the consideration and recommendations of the working group shall be submitted to the Committee on Trade in Goods for consideration and/or action.

Article 2.14: Tariff Rate Quota (TRQ) Administration

1. A Party that has established TRQs as set out in Annex 2-A shall implement and administer these TRQs in accordance with Article XIII of GATT 1994 and, for greater certainty, its interpretative notes, the Import Licensing Agreement, and any other WTO Agreement.
2. A Party shall ensure that its TRQ administration measures and implementation are consistent, transparent and are not adopted or maintained to create discrimination against the other Party.

Article 2.15: Designation of Testing Laboratories

Taking into consideration the regulations and requirements of respective legal framework, the competent authorities are encouraged to have discussions on the mutual recognition of the testing results by designating testing laboratories in the other Party in the fields of foods and cosmetics.

Section F: Institutional Provisions

Article 2.16: Committee on Trade in Goods

1. The Parties hereby establish a Committee on Trade in Goods (hereinafter referred to as the “Committee”), comprising representatives of each Party.
2. The Committee shall meet at least once a year to consider matters arising under this Chapter, and may meet more frequently as the Parties may agree.
3. The Committee’s functions shall include, *inter alia*:
 - (a) promoting trade in goods between the Parties, including through consultations on accelerating reduction or elimination of customs duties under this Agreement and other issues as appropriate;
 - (b) addressing barriers to trade in goods between the Parties, especially those related to the application of non-tariff measures and, if appropriate, referring such matters to the Joint Commission for its consideration;
 - (c) establishing working groups, if necessary, and monitoring the work of the working groups established under the auspices of the Committee; and
 - (d) exchanging information on matters related to subparagraphs (a) through (c) which may, directly or indirectly, affect trade between the Parties with a view to minimizing their negative effects on trade and seeking mutually acceptable alternatives.